

Minutes of the 14 March 2012
Special Meeting of the Yancey County Board of Commissioners
Held at 4:00 o'clock p.m. in the Commissioner's Meeting Room
Yancey County Courthouse, Burnsville, North Carolina

Present for the special meeting of the Yancey County Board of County Commissioners were Chairman Johnny Riddle, Member Jill Austin, Member Dale England, Member Marvin Holland, Member Michele Presnell, County Manager Nathan Bennett, County Attorney Donny Laws, Special County Attorney for Litigation David Etheridge, Clerk to the Board Jason Robinson, , and members of the media.

Call to Order and Approval of the Agenda

Chairman Riddle called the meeting to order and asked for a motion to approve the agenda. Commissioner Presnell made a motion to approve the agenda and it was seconded by Commissioner Holland. The vote to approve was unanimous. (Attachment A).

Conference with Counsel regarding settlement and resolution of pending appeals for ad valorem taxes made by Mountain Air Country Club, Mountain Air Development Corporation, and Settlers Edge, LLC

Chairman Riddle stated that part of the business of the meeting would need to be done in closed session and asked for a motion to go into closed session pursuant to NCGS 143-318.11(a)(3) to consult with attorneys regarding the ad valorem tax appeals made by Mountain Air Country Club, Mountain Air Development Corporation, and Settler's Edge, LLC. Commissioner England made the motion and it was seconded by Commissioner Austin. The vote to go into closed session was unanimous.

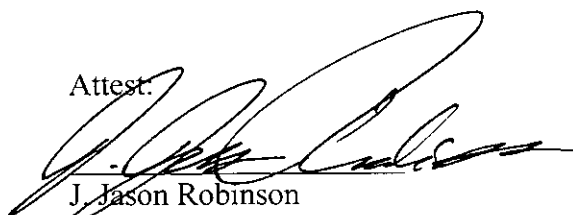
Upon coming out of closed session, Commissioner Austin made a motion to approve the settlement agreement with Mountain Air Country Club, Mountain Air Development Corporation, and Settlers Edge, LLC and to authorize the chairman to execute the settlement agreement. The motion was seconded by Commissioner Presnell and the vote to approve was unanimous. (Attachment B)

Adjournment

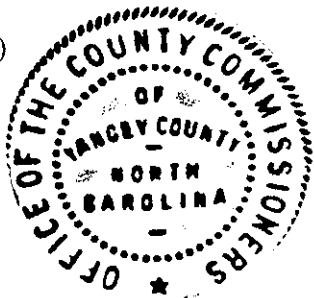
Having no further business Commissioner Austin made a motion to adjourn. The motion was seconded by Commissioner Presnell and the vote to adjourn was unanimous.

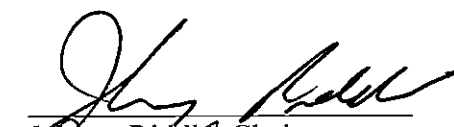
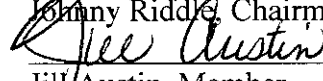
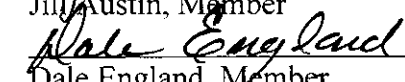
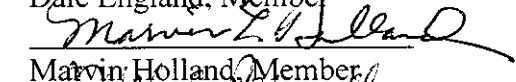
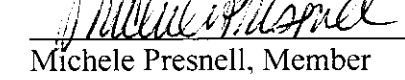
Approved and authenticated on this the _____ 3rd _____ day of April 2012.

Attest:


J. Jason Robinson
Clerk to the Board

(county seal)




Johnny Riddle, Chairman

Jill Austin, Member

Dale England, Member

Marvin Holland, Member

Michele Presnell, Member

COUNTY MANAGER
Nathan Bennett



COMMISSIONERS
Jill Austin
Dale England
Marvin Holland
Michele Presnell
Johnny Riddle

YANCEY COUNTY

110 Town Square, Room 11 • Burnsville, North Carolina 28714
PHONE: (828) 682-3971 • FAX: (828) 682-4301

AGENDA
YANCEY COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
March 14, 2012 at 5:00 P.M.

- I. Call to Order – Chairman Johnny Riddle
- II. Approval of the Agenda
- III. Conference with Counsel regarding settlement and resolution of pending appeals for ad valorem taxes made by the following taxpayers: Mountain Air Country Club, Mountain Air Development Corporation and Settler Edge, LLC
- IV. Adjourn

Attachment B

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the 16th day of March, 2012 between Mountain Air Development Corporation, its predecessors, successors, assigns, parent entities and subsidiaries, if any ("Taxpayer") and Yancey County, North Carolina ("County").

RECITALS

A. Taxpayer has appealed its Yancey County, North Carolina property tax assessments for certain parcels of real property owned or formerly owned by it for tax years 2008, 2009, 2010, and 2011. The appeals for tax years 2008 and 2009 are pending in the North Carolina Court of Appeals. The appeals for tax years 2010 and 2011 are pending before the North Carolina Property Tax Commission. All such appeals are hereinafter collectively referred to as the "Appeals".

B. This Agreement is intended to fully, finally, and completely settle and resolve all questions and issues concerning the listing, assessment, and appraisal of all parcels of real property of Taxpayer in the County for tax years 2008, 2009, 2010, and 2011 which are the subject of the Appeals. Upon execution of this Agreement, all Appeals shall be dismissed with prejudice as provided herein.

C. Taxpayer has duly authorized William R. Banks to execute this Agreement on its behalf.

D. The County has duly authorized the Chairperson of its Board of Commissioners to execute this Agreement on behalf of the County.

E. Taxpayer warrants and represents that it has not transferred, assigned, or conveyed any interest in any claim or matter relating to the Appeals such that any person or entity could in any way assert or revive any Appeal or claim put to rest by the terms of this Agreement. Taxpayer further warrants and represents that it has no knowledge of any person or entity who could assert any claim against County relating to or arising out of the tax assessments which are the subject of the Appeals;

F. Taxpayer warrants and represents that, by and through its authorized representatives, it has carefully read this Agreement before signing it, that it fully understands its terms, contents and effect, and that it has had the benefit and advice of counsel regarding this Agreement and has relied entirely upon its own judgment and the advice of its counsel in voluntarily executing this Agreement.

NOW, THEREFORE, for the consideration set forth below, and in further consideration of the mutual promises contained herein, the parties agree as follows:

I. All of the above Recitals are hereby incorporated into this Agreement by reference as though fully set forth herein verbatim.

II.

a. The **AGGREGATE VALUES** of all Taxpayer's parcels for the tax years which are the subject of the Appeals shall be as follows:

2008: \$11,647,000

2009: \$11,647,000

2010: \$11,647,000

2011: \$7,904,000

b. The tax values of the parcels which combined together comprise the aggregate values shall be listed on a schedule of those parcels which shall be prepared by the Yancey County Tax Department and which, upon completion, shall be attached to this Agreement as Exhibit "1" hereto and made a part hereof, *nunc pro tunc*.

c. Taxpayer shall pay the taxes due upon the aggregate values as follows:

2008: \$11,647,000	Payment: \$58,235.00
2009: \$11,647,000	Payment: \$58,235.00
2010: \$11,647,000	Payment: \$58,235.00
2011: \$7,904,000	Payment: \$39,520.00
TOTAL PAYMENTS:	\$214,225.00

The Payments shall be made within three (3) days of the receipt by Settlers Edge Holding Company, LLC of the refund made to it by County in accordance with that certain Settlement Agreement executed between Settlers Edge Holding Company, LLC and County contemporaneously herewith. The Payments shall be in the form of certified funds drawn upon a federally authorized banking or other financial institution and shall be made payable to the Yancey County Tax Department;

d. Upon the completion of Exhibit "1", the payments shall be applied to the parcels as shown thereon and upon processing of the payments the County Tax Department shall issue receipts therefor and shall release Taxpayer from all liability for the taxes for which such payments are made;

e. Unless and until the Payments have been fully made and properly credited to Taxpayer's accounts with the County, County shall retain its statutory lien against any such parcel of land for which payment is due and the right to pursue enforced collection against Taxpayer and/or any other party to whom such parcel of land has or may have been conveyed in accordance with the appropriate provisions of the North Carolina Machinery Act, NCGS 105-271 *et seq.*, and any other applicable law of North Carolina, of the agreed upon amounts with respect to any parcel owned or formerly owned by Taxpayer for any tax year for which such payment has not been made, irrespective of whether Taxpayer owns the parcel on the date of the execution of this Agreement. By executing this Agreement, Taxpayer specifically waives any and all defenses or objections it has or may have to contest or defend such enforced collection on any grounds allowed by the Machinery Act or other law;

f. Within five (5) days of execution of this Agreement by the authorized representatives of the parties, Taxpayer through counsel, shall withdraw and voluntarily dismiss, with prejudice, all Appeals presently pending before the North Carolina Court of Appeals and the North Carolina Property Tax Commission. This covenant shall be performed by Taxpayer irrespective of whether Taxpayer has made the Payments;

g. The Tax Values of the parcels for the Tax Year 2011 shall be carried forward to Tax Year 2012 and subsequent Tax Years until the County's next octennial revaluation pursuant to North Carolina law, subject to change in accordance with the provisions of NCGS 105-286, NCGS 105-287 and other pertinent provisions of North Carolina law.

III. MUTUAL FULL AND FINAL RELEASE. In consideration of and subject to the full and complete performance of the acts and obligations provided in the foregoing sections, including but not limited to the Taxpayer's obligation to make the Payments when due, and in further consideration of the mutual promises contained herein, the adequacy of which is acknowledged by each party, Taxpayer and Yancey County do hereby release, acquit, and forever discharge each other from any and all causes of action, claims, counterclaims, liens, costs, injuries, expenses, damages and demands whatsoever, whether known or unknown, which they have, claim to have, or hereafter may have or claim to have against each other, upon or by any reason of the matters which are the subject of this Agreement. The foregoing sentence does not affect claims arising under this Agreement.

IV. DRAFTING OF DOCUMENT AND RELIANCE. Each party and their counsel have reviewed and participated in the drafting of this Agreement. Neither party shall be considered as the exclusive drafter of this Agreement.

V. **CAPTIONS.** Captions to paragraphs and sections of this Agreement have been included solely for the sake of convenient reference and are entirely without substantive effect.


VI. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement among all parties in regard to the matters set forth herein, except those set forth in Exhibit A that continue in full force and effect. The terms of this Agreement are contractual and not a mere recital, and there are no agreements, understandings, or representations of any kind made by the parties to this Agreement or their attorneys except as expressly stated herein. Each provision of this Agreement is intended to be severable. If any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the remainder of this Agreement.

VII. **EXECUTION OF AGREEMENT.** This Agreement may be executed in several counterparts and each such counterpart shall be deemed an original. Execution is complete at the time of the last necessary signature.

IN WITNESS WHEREOF, Taxpayer and County have executed this Agreement as their free act and deed.

AGREED:

**MOUNTAIN AIR DEVELOPMENT
CORPORATION**

By: 

Its: President

YANCEY COUNTY, NORTH CAROLINA

By: 
Chair, Board of Commissioners

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the 16th day of March, 2012 between Settlers Edge Holding Company, LLC, its predecessors, successors, assigns, parent entities and subsidiaries, if any ("Taxpayer") and Yancey County, North Carolina ("County").

RECITALS

A. Taxpayer has appealed its Yancey County, North Carolina property tax assessments for certain parcels of real property owned or formerly owned by it for tax years 2008, 2009, 2010, and 2011. The appeals for tax years 2008 and 2009 are pending in the North Carolina Court of Appeals. The appeals for tax years 2010 and 2011 are pending before the North Carolina Property Tax Commission. All such appeals are hereinafter collectively referred to as the "Appeals".

B. This Agreement is intended to fully, finally, and completely settle and resolve all questions and issues concerning the listing, assessment, and appraisal of all parcels of real property of Taxpayer in the County for tax years 2008, 2009, 2010, and 2011 which are the subject of the Appeals. Upon execution of this Agreement, all Appeals shall be dismissed with prejudice as provided herein.

C. Taxpayer has duly authorized William R. Banks to execute this Agreement on its behalf.

D. The County has duly authorized the Chairperson of its Board of Commissioners to execute this Agreement on behalf of the County.

E. Taxpayer warrants and represents that it has not transferred, assigned, or conveyed any interest in any claim or matter relating to the Appeals such that any person or entity could in any way assert or revive any Appeal or claim put to rest by the terms of this Agreement. Taxpayer further warrants and represents that it has no knowledge of any person or entity who could assert any claim against County relating to or arising out of the tax assessments which are the subject of the Appeals;

F. Taxpayer warrants and represents that, by and through its authorized representatives, it has carefully read this Agreement before signing it, that it fully understands its terms, contents and effect, and that it has had the benefit and advice of counsel regarding this Agreement and has relied entirely upon its own judgment and the advice of its counsel in voluntarily executing this Agreement.

NOW, THEREFORE, for the consideration set forth below, and in further consideration of the mutual promises contained herein, the parties agree as follows:

I. All of the above Recitals are hereby incorporated into this Agreement by reference as though fully set forth herein verbatim.

II.

a. The **AGGREGATE VALUES** of all Taxpayer's parcels for the tax years which are the subject of the Appeals shall be assessed as follows:

2008: \$7,746,900

2009: \$7,746,900

2010: \$7,746,900

2011: \$6,559,900

b. In order to effect these assessments, the Yancey County Tax Department shall recharacterize all individual parcels owned by the Taxpayer as a two non-contiguous parcels of property.

c. The tax values of the parcels which combined together comprise the aggregate values shall be listed on a schedule of those parcels which shall be prepared by the Yancey County Tax Department and which, upon completion, shall be attached to this Agreement as Exhibit "1" hereto and made a part hereof, *nunc pro tunc*.

d. The parties acknowledge that the following payments have been received by the Yancey County Tax Department:

Tax Year 2008: \$117,584.52 (payment received on December 14, 2009)

Tax Years 2009-2011: \$354,161.48 (payment received on September 26, 2011)

e. Based upon the adjusted aggregate values of Taxpayer's parcels as set forth in subparagraph (a), above, the following amounts shall be refunded by the County to the Taxpayer:

2008:

Amount paid:	\$117,584.52
Tax on \$7,746,900:	\$ 38,734.50
County Interest retained:	<u>\$ 11,001.63</u>
Refund:	\$ 67,848.39

2009-2011:

Amounts paid:	\$354,161.48
2009 Tax on \$7,746,900:	\$ 38,734.50
2010 Tax on \$7,746,900:	\$ 38,734.50
2011 Tax on \$6,559,900:	\$ 32,799.95
County Interest retained:	<u>\$ 25,174.15</u>
Refund:	\$218,718.38

f. By this Agreement, Taxpayer hereby applies for and requests a refund of the overpayments made in the above tax years based upon the difference between the aggregate tax values originally assessed by County and the agreed upon aggregate tax values. Taxpayer agrees that the County interest that was included in the payments when made shall be retained by the County and that no interest shall be payable by County to Taxpayer on the amounts refunded.

g. Within three (3) days of execution of this Agreement by the authorized representatives of the parties, County will issue the foregoing refund in amount of \$286,566.77 as per subparagraph (d), above. The refund shall be in the form of a wire transfer to an account designated by Taxpayer.

h. Within five (5) days of execution of this Agreement by the authorized representatives of the parties, Taxpayer through counsel, shall withdraw and voluntarily dismiss, with prejudice, all Appeals presently pending before the North Carolina Court of Appeals and the North Carolina Property Tax Commission;

i. The Tax Value of the parcels for the Tax Year 2011 in the amount of \$6,559,900 shall be carried forward to Tax Year 2012 and subsequent Tax Years until the County's next octennial revaluation pursuant to North Carolina law, subject to change in accordance with the provisions of NCGS 105-286, NCGS 105-287 and other pertinent provisions of North Carolina law.

III. MUTUAL FULL AND FINAL RELEASE. In consideration of and subject to the full and complete performance of the acts and obligations provided in the foregoing sections, including but not limited to the Taxpayer's obligation to make the Payments when due, and in further consideration of the mutual promises contained herein, the adequacy of which is acknowledged by each party, Taxpayer and Yancey County do hereby release, acquit, and forever discharge each other from any and all causes of action, claims, counterclaims, liens, costs, injuries, expenses, damages and demands whatsoever, whether known or unknown, which they have, claim to have, or hereafter may have or claim to have against each other, upon or by

any reason of the matters which are the subject of this Agreement. The foregoing sentence does not affect claims arising under this Agreement.

IV. **DRAFTING OF DOCUMENT AND RELIANCE.** Each party and their counsel have reviewed and participated in the drafting of this Agreement. Neither party shall be considered as the exclusive drafter of this Agreement.

V. **CAPTIONS.** Captions to paragraphs and sections of this Agreement have been included solely for the sake of convenient reference and are entirely without substantive effect.

VI. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement among all parties in regard to the matters set forth herein, except those set forth in Exhibit A that continue in full force and effect. The terms of this Agreement are contractual and not a mere recital, and there are no agreements, understandings, or representations of any kind made by the parties to this Agreement or their attorneys except as expressly stated herein. Each provision of this Agreement is intended to be severable. If any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the remainder of this Agreement.

VII. **EXECUTION OF AGREEMENT.** This Agreement may be executed in several counterparts and each such counterpart shall be deemed an original. Execution is complete at the time of the last necessary signature.

IN WITNESS WHEREOF, Taxpayer and County have executed this Agreement as their free act and deed.


AGREED:

SETTLERS EDGE HOLDING COMPANY LLC

By: 

Its: MANAGER

YANCEY COUNTY, NORTH CAROLINA

By: 
Chair, Board of Commissioners

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the 19th day of March, 2012 between Mountain Air Country Club, Inc., its predecessors, successors in interest, assigns, parent entities and subsidiaries, if any ("Taxpayer") and Yancey County, North Carolina ("County").

RECITALS

A. Taxpayer has appealed its Yancey County, North Carolina property tax assessments for certain parcels of real property owned or formerly owned by it for tax years 2008, 2009, 2010, and 2011. The appeals for tax years 2008 and 2009 are pending in the North Carolina Court of Appeals. The appeals for tax years 2010 and 2011 are pending before the North Carolina Property Tax Commission. All such appeals are hereinafter collectively referred to as the "Appeals".

B. This Agreement is intended to fully, finally, and completely settle and resolve all questions and issues concerning the listing, assessment, and appraisal of all parcels of real property of Taxpayer in the County for tax years 2008, 2009, 2010, and 2011 which are the subject of the Appeals. Upon execution of this Agreement, all Appeals shall be dismissed with prejudice as provided herein.

C. Taxpayer has duly authorized William R. Banks to execute this Agreement on its behalf for Tax Years 2008 and 2009.

D. Taxpayer has duly authorized John H. Bailey, III to execute this Agreement on its behalf for tax years 2010 and 2011.

E. The County has duly authorized the Chairperson of its Board of Commissioners to execute this Agreement on behalf of the County.

F. Taxpayer warrants and represents that it has not transferred, assigned, or conveyed any interest in any claim or matter relating to the Appeals such that any person or entity could in any way assert or revive any Appeal or claim put to rest by the terms of this Agreement. Taxpayer further warrants and represents that it has no knowledge of any person or entity who could assert any claim against County relating to or arising out of the tax assessments which are the subject of the Appeals;

G. Taxpayer warrants and represents that, by and through its authorized representatives, it has carefully read this Agreement before signing it, that it fully understands its terms, contents and effect, and that it has had the benefit and advice of counsel regarding this Agreement and has relied entirely upon its own judgment and the advice of its counsel in voluntarily executing this Agreement.

NOW, THEREFORE, for the consideration set forth below, and in further consideration of the mutual promises contained herein, the parties agree as follows:

I. All of the above Recitals are hereby incorporated into this Agreement by reference as though fully set forth herein verbatim.

II.

a. The **AGGREGATE VALUES** of all Taxpayer's parcels for the tax years which are the subject of the Appeals shall be as follows:

2008: \$2,000,000

2009: \$2,000,000

2010: \$2,000,000

2011: \$8,100,000

b. The tax values of the parcels which combined together comprise the aggregate values shall be listed on a schedule of those parcels which shall be prepared by the Yancey County Tax Department and which, upon completion, shall be attached to this Agreement as Exhibit "1" hereto and made a part hereof, *nunc pro tunc*.

c. Taxpayer shall pay the taxes due upon the aggregate values as follows:

2008: \$2,000,000	Payment: \$10,000.00
2009: \$2,000,000	Payment: \$10,000.00
2010: \$2,000,000	Payment: \$10,000.00
2011: \$8,100,000	Payment: \$40,500.00
TOTAL PAYMENT:	\$70,500.00

The Payments shall be made on March 20, 2012 in funds drawn upon a federally authorized banking or other financial institution and shall be made payable to Yancey County Tax Department;

d. Upon the completion of Exhibit "1", the payments shall be applied to the parcels as shown thereon and upon processing of the payments the County Tax Department shall issue receipts therefor and shall release Taxpayer from all liability for the taxes for which such payments are made;

e. Unless and until the Payments have been fully made and properly credited to Taxpayer's accounts with the County, County shall retain its statutory lien against any such parcel of land for which payment is due and the right to pursue enforced collection against Taxpayer and/or any other party to whom such parcel of land has or may have been conveyed in accordance with the appropriate provisions of the North Carolina Machinery Act, NCGS 105-271 *et seq.*, and any other applicable law of North Carolina, of the agreed upon amounts with respect to any parcel owned or formerly owned by Taxpayer for any tax year for which such payment has not been made, irrespective of whether Taxpayer owns the parcel on the date of the execution of this Agreement. By executing this Agreement, Taxpayer

specifically waives any and all defenses or objections it has or may have to contest or defend such enforced collection on any grounds allowed by the Machinery Act or other law;

f. Within five (5) days of execution of this Agreement by the authorized representatives of the parties, Taxpayer through counsel, shall withdraw and voluntarily dismiss, with prejudice, all Appeals presently pending before the North Carolina Court of Appeals and the North Carolina Property Tax Commission. This covenant shall be performed by Taxpayer irrespective of whether Taxpayer has made the Payments;

g. The Tax Values of the parcels for the Tax Year 2011 shall be carried forward to Tax Year 2012 and subsequent Tax Years until the County's next octennial revaluation pursuant to North Carolina law, subject to change in accordance with the provisions of NCGS 105-286, NCGS 105-287 and other pertinent provisions of North Carolina law.

III. MUTUAL FULL AND FINAL RELEASE. In consideration of and subject to the full and complete performance of the acts and obligations provided in the foregoing sections, including but not limited to the Taxpayer's obligation to make the Payments when due, and in further consideration of the mutual promises contained herein, the adequacy of which is acknowledged by each party, Taxpayer and Yancey County do hereby release, acquit, and forever discharge each other from any and all causes of action, claims, counterclaims, liens, costs, injuries, expenses, damages and demands whatsoever, whether known or unknown, which they have, claim to have, or hereafter may have or claim to have against each other, upon or by any reason of the matters which are the subject of this Agreement. The foregoing sentence does not affect claims arising under this Agreement.

IV. DRAFTING OF DOCUMENT AND RELIANCE. Each party and their counsel have reviewed and participated in the drafting of this Agreement. Neither party shall be considered as the exclusive drafter of this Agreement.

V. **CAPTIONS.** Captions to paragraphs and sections of this Agreement have been included solely for the sake of convenient reference and are entirely without substantive effect.

VI. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement among all parties in regard to the matters set forth herein, except those set forth in Exhibit A that continue in full force and effect. The terms of this Agreement are contractual and not a mere recital, and there are no agreements, understandings, or representations of any kind made by the parties to this Agreement or their attorneys except as expressly stated herein. Each provision of this Agreement is intended to be severable. If any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the remainder of this Agreement.

VII. **EXECUTION OF AGREEMENT.** This Agreement may be executed in several counterparts and each such counterpart shall be deemed an original. Execution is complete at the time of the last necessary signature.

IN WITNESS WHEREOF, Taxpayer and County have executed this Agreement as their free act and deed.

Agreed:

**MOUNTAIN AIR COUNTRY CLUB, INC. (for Tax
Years 2008 and 2009)**

By: Walter R. Bales

Its: President

**MOUNTAIN AIR COUNTRY CLUB, INC. (for Tax
Years 2010 and 2011)**

By: John H. Bailey, Jr.

Its: Agent pursuant to Power
Attorney

YANCEY COUNTY, NORTH CAROLINA

By: [Signature]
Chair, Board of Commissioners